IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 16877 of 2007(H)

PETITIONER:

VASUDVAN, S/OKRISHNAN,KOLLARU VALAPPIL,
KODANADU DESOM, MEZHATHUR AMSOM,
OTTAPPALAM TALUK.

BY ADV. SRI.SANTHEEP ANKARATH.

RESPONDENTS:
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1. **RAJAN, S/O.KUNHAN, VARIYATH VALAPPIL,**
   KODANAD DESOM, MEZHATHUR DESOM, OTTAPALAM TALUK.

2. **SASI S/O.THAMI, KOLASSERI PARAMBIL,**
   -DO- -DO-

3. **BABU, S/O.ELAMKULAM PALLIYALIL KARUVAN,**
   -DO- -DO-.

BY ADV. SRI.K.JAYAKUMAR,
ADV. SRI. S.V. BALAKRISHNA IYER,
ADV. SRI.P.B.KRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.16877/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ELECTION PETITION NO. 11/2005 FILED BEFORE THE MUNSIFF'S MAGISTRATE COURT, PATTAMBI BY THE PETITIONER, DTD. 25/10/2005.

EXT.P.2: COPY OF THE AFFIDAVIT IN SUPPORT OF THE PETITION AS I.A. 889 OF 2006, DTD. 08/12/2006.

EXT.P.3: COPY OF THE COUNTER DTD. 11/12/2006.

EXT.P.4: COPY OF THE ORDER DTD. 05/03/2007 IN I.A. 889/2006 IN ELE. OP. 11/2005, BY THE MUNSIFF-MAGISTRATE COURT, PATTAMBI.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N. KRISHNAN, J.

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W.P.C. NO. 16877 OF 2007

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Dated this the 24th day of September, 2007.

J U D G M E N T

This writ petition is preferred to set aside Ext.P4 order of the learned Munsiff, Pattambi in Election Petition 11 of 2005. The petitioner moved an application for production of documents from the Cooperative Bank, Koottanad and Service Cooperative Bank, Thrihala. These documents were sought to be summoned for the purpose of proving the allegations made in paragraph 4 of the petition. In paragraph 4 of the election petition it is submitted that in Form No.2A successful candidate has only stated that he had taken a loan of Rs.10,000/- and no amount is due. It is subsequently averred by the petitioner that the first respondent in the election petition had borrowed a sum of Rs.50,000/- as NAMT loan from the Service Cooperative Bank, Koottanad and there was an outstanding amount of

Rs.15,731/- as overdue. It is also submitted that from the Thrithala Service Cooperative Bank loan has been taken by the first respondent in the election petition and an amount of Rs.45,000/- is due. According to the election petitioner this is a gross violation of the election provisions and non-disclosure of material facts in the Form 2A submitted by him. The Court below by the impugned order was of the opinion that the petition is not maintainable because the copies of the documents relied upon by the election petitioner had not been furnished and therefore he is not entitled to get those documents summoned before the Court. The Court below also referred to the decision of the Apex Court reported in **M. Karunakaran v. H.V. Handa (AIR 1983 SC 558)**. It was a case with respect to the corrupt practices in an election and it was mainly under the Representation of People's Act to supply all the documents along with the petition itself wherein corrupt practices are alleged. Similarly, provision is available under Section 91 of the Panchayat Raj Act as well. But, this is a case wherein the election is not sought to be set aside on the ground of corrupt practices but on some

other ground. So, the factum laid down in 1983 SC 558 may not directly apply to the facts of the case.

2. Another decision cited and relied upon is the decision reported in **U.S. Sasidharan v. K. Karunakaran (AIR 1990 SC 924)**. In that case the Apex Court held that when only very vague averments are made and it is not supported by documents, at a later stage there cannot be a further amplification of the same and therefore document need not be permitted to be summoned in such type of cases. Here, the first respondent is the person who had furnished details in Form No.2A. What the election petitioner submits is that Form No.2A is not properly filed and there are outstanding dues and it had been materially suppressed which amounts to violation of the Rules and provisions and therefore election is held in violation of those grounds. According to him, in this case, he had furnished full details regarding the facts on which he want to rely on that ground. Now, what he seeks to summon is only documents establishing those facts. There is no vagueness in the pleadings nor suppression of any material facts in the

pleadings. But, what is attempted to be proved by summoning the document is that fact which he had alleged in paragraph 4 of the petition. Therefore, one cannot hold that the election petitioner is not justified in summoning the documents in order to establish his case.

3. The learned counsel for the respondents had taken me through the various provisions of the Panchayat Raj Act and it has to be stated that in a case of this nature when the election petitioner wants to prove some specific detail which he had made in the election petition, then it is the duty of the Court to summon all those documents and find out whether there is any truthfulness in the said allegations. Therefore, I feel that the Court below has not properly approached the matter in the correct perspective and it had gone wrong in refusing to summon the documents. Therefore, the matter requires interference at the hands of this Court and therefore the order under challenge is set aside and the application to summon document is allowed and the Court below is directed to summon the documents sought for by the writ petitioner in the case. Needless to say

that the respondent in the writ petition can resist the contentions raised by the petitioner and he can also raise all questions, including technical questions which are permitted by law.

With this observation, this writ petition is disposed of.

M.N. KRISHNAN, JUDGE.

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